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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 522

F. L. CROWDER, TR/AS HARRIMAN BROADCASTING COMPANY, *Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Respondent,*
FOLKWAYS BROADCASTING COMPANY, INC., *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT FOLKWAYS BROADCASTING COMPANY, INC. IN OPPOSITION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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REPORTS BELOW AND JURISDICTION

The statements contained in the petition for a writ of certiorari concerning opinions below and jurisdiction are considered adequate.

QUESTIONS PRESENTED

Respondent Folkways Broadcasting does not agree with the petitioner that this case fairly presents any question of an impermissible distortion by the Federal Communications Commission or the U. S. Court of Appeals of the proposition that trafficking in broadcast authorizations is inconsistent with the public interest requirements of the Communications Act of 1934, as amended. Further, although the petitioner phrases his four questions with selected factual and argumentative assertions, it is submitted that none of them adequately recites what is here involved, *viz.*, the Commission's judgment, after an evidentiary hearing, on the petitioner's inconsistent representations, and a deliberate misrepresentation, in connection with the acquisition and sale of broadcast stations. This respondent respectfully suggests to the Court that the issue presented by this case is:

Where an applicant for a permit for a new broadcast facility has previously owned and sold broadcast facilities, one of them in the community for which the new permit is sought, and an evidentiary hearing is held to explore the representations made by the applicant to the Commission in connection with the present proposal and prior transactions, did the Commission properly determine that the petitioner had not met his burden of proof on the question of trafficking in broadcast authorizations, had failed to reconcile inconsistent representations, had made a deliberate misrepresentation, and that on the basis of the entire evidentiary record it was not satisfied as to the petitioner's credibility so that a grant of the application could not therefore be made in light of the Communications Act standard of public interest, convenience and necessity?

STATUTE INVOLVED

Relevant portions of the governing statute (Communications Act of 1934, as amended, 66 Stat. 718, 47 U.S.C. Section 151, ff.) have been set forth in the petition.

STATEMENT

Although this respondent cannot adopt the petitioner's statement of facts, a full counterstatement would be unnecessarily long and might obscure the differences between the respondent's and petitioner's view of the case. Consequently, the respondent will set forth a summary of the matters involved and then indicate the important additions to the petitioner's statement.

Petitioner F. L. Crowder applied to the Federal Communications Commission for a permit for a new AM broadcast station in Harriman, Tennessee, where he had owned previously, but sold at a profit, Station WHBT. Respondent Folkways Broadcasting Company, Inc., the then-licensee of WHBT, filed a petition to deny the Crowder application or to have it designated for hearing on a number of issues, including one concerning trafficking in broadcast authorizations. The petition was filed pursuant to Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. 309(d). The trafficking in broadcast licenses question was premised upon Crowder's attempted re-entry into Harriman taken in conjunction with his transactions with Station WDEH, Sweetwater, Tennessee, and Station WLIV, Livingston, Tennessee. During the pleadings which were filed in conjunction with the Section 309(d) petition, Crowder represented to the Commission that the earlier WHBT and WDEH sales had been occasioned by ill health of such magnitude that he was

forced to retire from active participation in the broadcast industry, although during the now alleged time of ill health he was acquiring as a 50% partner a new station at Livingston, Tennessee, in which he had represented he would be the general manager. By a divided vote the Commission initially granted Crowder's application for another station in Harriman, with the majority accepting the petitioner's pleaded explanation.

On appeal to the U.S. Court of Appeals for the District of Columbia Circuit from this initial grant without hearing, the Court reversed the grant and held that the evidentiary hearing specified by Section 309(d)(e) of the Communications Act was required on issues concerning Crowder's qualifications.[1] On the trafficking question the Court stated:

> "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than service. There may be a basis for reconciling the inconsistent representations in a manner which prevents disqualification of Crowder, but the subject [needs] examination at a live hearing."[2]

No further review was sought of this Court of Appeals decision.

The inconsistent representations/trafficking question was explored in the evidentiary hearing which followed.

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[1] And also on the question of whether the advent of the station Crowder proposed in Harriman would lead to a degradation of service to the public. The other issues raised in the petition to deny did not require an evidentiary hearing, the Court opined. *Folkways Broadcasting Co., Inc.* v. *F.C.C.*, — U. S. App. D. C. —, 375 F. 2d 299(1967).

[2] *Ibid.*, 375 F. 2d at 302.

The record developed on this issue is distilled in the Commission's decision [3] and in the detailed opinion by the Court of Appeals affirming the Commission, printed with the petition (Pet. App. 1a-9a). We do not think it desirable to extend the within brief by a repetition of what there appears; however, a capsule of the operative elements of the misrepresentation/trafficking question might be helpful so as to cast in context the subsequently noted corrections to the petitioner's Statement. Crowder was the sole owner and general manager of WHBT in Harriman and upon application to the Commission obtained another station in Sweetwater, Tennessee, WDEH. In 1956 he applied for Commission consent to his sale of both stations, telling the agency that he wished to withdraw from broadcasting in those communities. During the same year he filed an application with his brother-in-law for a station in Livingston, Tennessee (WLIV). In that application Crowder stated that he would be the station's general manager. He sold his interest in WLIV to his partner in 1964. All the sales were profitable to him, Crowder realizing profits of approximately $91,000 on the WDEH and WHBT sales and $50,000 on WLIV, plus annual withdrawals of profit. (R. 942).

While he had the Livingston interest, he filed the instant application for a new station in Harriman. In response to Folkways' petition, which raised the trafficking question as to whether Crowder was seeking another station in the community in which he previously owned and sold one so as to subsequently sell it too, Crowder represented to the Commission that the earlier

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[3] 9 F.C.C. 2d 731, which appears in the Joint Appendix of the Court of Appeals record, certified to this Court, at pp. 410-462.

sales of WHBT, Harriman, and of WDEH, Sweetwater, had actually been occasioned by ill health and that upon a doctor's advice he had retired from broadcasting and sold the stations. This explanation was not offered to the Commission until 1965, however, notwithstanding the earlier applications' requirements for a full statement of reasons for the sales, and ranged against it was Crowder's WLIV application and its general manager representation, filed at the time of the now alleged ill health of such magnitude that withdrawal from the broadcast industry was required. The ill-health-in-1956 representation had been made by Crowder to cut off inquiry on the trafficking question, and then when the evidence showed that the ill health reason was a most peculiar explanation for the earlier sales because at the now asserted ill-health time he was applying with his brother-in-law for a new station, with Crowder's representation of a role of general manager thereof, the petitioner came up with a new explanation for the earlier sales. He then offered the explanation that problems with managers at one station, WDEH, required both sales, and to negate the WLIV general manager representation he asserted he had a private, undisclosed agreement not to perform as stated and in fact had not so performed.

During the hearing Crowder presented no medical testimony, nor did he even identify the physician who, in his one explanation version, advised him to retire from broadcasting. Even the third explanation for the 1956 WHBT and WDEH sales, *viz.*, managerial problems at one station, was not proffered until after the respondent had subpoenaed the records of the broker who handled the sales and showed that the stations had been listed for sale as early as June of 1955, incon-

sistent with Crowder's second-explanation representations that ill health in 1956 necessitated the stations' sales. Additionally, the record evidence showed that during the now asserted ill health year he acquired and operated a bottling plant operation in Livingston. He purchased a house there, and later an apartment, so as to be near the Livingston activities. (R. 987; Tr. 343, 350).

The Commission's records also showed that Crowder claimed the ownership of another business in Harriman, the Harriman Billiard Parlor, and both in the application for the instant station as well as in the proceedings on the initial petition to deny, Crowder pointed to the existence of the operation as a basis for financial ability and a nexus with the Harriman community, and the representation was relied upon by the Commission in making the initial grant without a hearing. (R. 326). During the hearing, however, an examination of the representation commenced, when Crowder asserted that contrary to the statements contained in the applications and reports to the Commission, he had not been the sole owner of the business but had disposed of a portion of it as early as 1948 to the individual who managed the operation. The only explanation proffered by Crowder for the difference between the actual ownership picture and that portrayed to the Commission in applications and reports was "an error".[4] Finally, the record contains testimony by a Mr. Harry T. Burn, a lawyer and banker from Rockwood, Tennessee, where Crowder had established a remote studio for WHBT

[4] The other business interest representation was made in varying ways as, for example, "Ownership since 1944", "100% owner", and "Harriman Billiard Parlor (Owner)". See Tr. 324, 1597 & 1664, and copies of reports in Appendix to Intervenor's Brief in case below.

when he owned the station. The thrust of the Burn testimony was that in conversations between him and Crowder the latter indicated his attitude towards broadcasting as that money was to be made in the acquisition and sale of stations rather than by continued operation.

The Commission found that Crowder failed to meet his burden of proof on the trafficking issue regardless of Burn's testimony, although the latter was consistent with the objective evidence. The petitioner's characterization of the Commission's summarization of its reasons for denying the application is misleading (Pet., pp. 20-23), particularly since the petitioner avoids the Commission's decisional statements and relies instead on the proposed conclusions of the Hearing Examiner. Full quotation of the Commission decision would obviously not be appropriate here; however, since some excerpts will indicate the evidence of record which was considered, the Commission's evaluation of the same, and the agency's resolution of the petitioner's qualification issue, this Statement will conclude with such excerpts.

First, in the final decision the Commission noted that it was in essential agreement with the Hearing Examiner's findings of fact and they formed the substantial basis of the final decision, but it could not agree with the Examiner's conclusions since in the agency's view the Examiner "fail[ed] to accord proper weight to relevant and material evidence of record bearing on the question of trafficking, and that undue emphasis has been placed on certain facts, while others of equal or greater significance have not been given proper consideration." (R. 1119). Secondly, in reaching its ultimate conclusion to deny the Crowder application the

Commission noted that "Crowder is seeking a station in Harriman, where he previously had one. If his primary interest was in station operation in that community, the normal course would have been to continue the operation of station WHBT, not sell it at a profit and then seek another license." (R. 1121). On the evidence of the several reasons for the sale proffered by Crowder, the Commission opined that the ill health claim could not be accepted because it was not mentioned as a reason at the time of the sale notwithstanding the application form's specific direction for a full recitation of any reasons for the sale, no medical corroboration was offered although the petitioner claimed to have relied upon a doctor's advice, the record contained the unrebutted testimony of Crowder's WHBT manager that Crowder had never complained to him about ill health, Crowder's acquisition of the substantial bottling plant activity in the year of claimed ill health, and because of Crowder's 1956 representation that he would be the general manager of WLIV, changed only when the inconsistency between it and the ill health claim arose. "We cannot permit an applicant thus to decide as it suits his purpose which of his inconsistent representations we are to believe. In any event, the other factors already mentioned convince us that there is too large a doubt here to permit a grant of Crowder's instant application." (R. 1121). The decision went on to note that the same basic problems were present with respect to the WDEH transaction, forasmuch as Crowder attempted to sell it less than a year after the initial grant and he allowed even the second proffered explanation of a sale in 1956 because of ill health to stand until the subpoenaed files of the media broker showed that the stations had been listed for sale in June

of 1955. Crowder's inconsistent representations both with respect to the WLIV managership item and the ownership of his other Harriman business were also weighed, and the Commission's decision recited that it was not satisfied as to the petitioner's credibility. With respect to the 1956 WLIV application representation, it concluded that the managership claim "was a deliberate misrepresentation" in light of Crowder's recognization that when made the representation had been put forward to be relied upon by the Commission. With all of this, the Commission concluded that it was not able to make the statutory finding that a grant of Crowder's application for another station in Harriman was in the public interest, convenience and necessity.

The Commission decision was affirmed by the U. S. Court of Appeals for the District of Columbia. The Court's opinion reviewed the premises of the Commission's decision and the reasoning expressed by the agency. By citation to cases and legislative history the Court held that the question of trafficking in broadcast authorizations is properly a concern of the Commission under the Communications Act, albeit a broadcast license does not exclude an intention to profit since the profit element is essential to the full development of broadcasting. The Court noted the petitioner's deliberate misrepresentation as found by the Commission, and pointed out that such misrepresentations by themselves could justify the denial of a license. The Court agreed with the Commission's application of the trafficking policy in the factual situation here present, concluding that the Commission's denial of the application was within the statutory contemplation.

ARGUMENT

This case does not involve any important questions warranting review by this Court. The heart of this case is the petitioner's attempt to foreclose Commission consideration of his transactions in the acquisition and sales of broadcast stations by inconsistent representations, changed only as the inconsistencies were found out. The petitioner's argument that since he was involved with only three stations and the transactions considered spanned a number of years a denial of his application to obtain a station in a community in which he previously owned and sold a station threatens the future of the entire radio and television industry, is a gloss on the proceedings below. The application was denied by the Commission, and the denial was affirmed by the Court of Appeals, on grounds traditionally employed in assaying the question of whether the Communications Act's requirement that the public interest, convenience and necessity standard must be satisfied before a license may be issued. Although the petitioner does not dispute the proposition that the Commission has been and should be concerned with trafficking in broadcast authorizations, and albeit he argues that the matter of trafficking is a determination based upon an "interplay of the elements of price, time and intention" (Pet., p. 33), he avoids a recognition of the principle that the results in trafficking cases must turn on the factual premises. To the extent that the petitioner seeks a reassessment of the facts upon which the Commission and the Court below reached their decisions, further review is unwarranted. To the extent he contends that in some cases involving a trafficking question a result was reached different from the one in the instant case, he is simply conceding that matters in the

trafficking area have varying factual patterns, and more, his own argument also means that because of the sensitive nature of the trafficking question the Commission will look at the varying patterns and grant a requested authorization only if it is satisfied sufficiently that the statutory standard is met by the applicant. The Commission's guard against trafficking in broadcast authorizations is a familiar one, as set out in the opinion of the Court below. Except for the petitioner's conjecture there is no threat in this case to broadcasters or applicants who do not make material misrepresentations or attempt to conceal material facts from the Commission in the agency's inquiry into the sensitive issue of trafficking.

A. The Decision in This Case, Involving an Applicant Who Attempted To Deceive the Commission With Respect to the Question of Trafficking in Licenses, Presents No Threat to the Communications Industry

The petitioner's argument in support of his request for a writ of certiorari is dependent on his attempts to establish (1) that the decision threatens the broadcast industry because if he could be denied a license on the ground that he had not dispelled the trafficking in licenses questions which had been raised, every application would be open to attack on trafficking grounds and newcomers would be afraid to enter the industry, and (2) since the Commission's considerations with respect to trafficking have not had fixed time, price and number of transactions specifications, its conclusion in the present case must be viewed as arbitrary since the petitioner's transactions were fewer in number and went over a period of time as long or longer than other applicants who have not been denied a license on the

ground of trafficking. The argument is supported only by an erroneous view of the Commission's actions in this and other cases and by a failure to recognize that the instant case includes the petitioner's attempted deception of the Commission in the agency's exploration of the decisional issue.

The petitioner does not appear to quarrel seriously with the propriety of the Commission guarding against trafficking in broadcast authorizations (Pet., p. 33), and his argument seems to be that trafficking depends upon the interplay of time, price, and intention, with the latter element perhaps the most significant one (*Ibid.*). He overlooks, however, the proposition that outward manifestations can and must be utilized in assaying intention. The nub of his case is that he has now said to the Commission that he does not "intend" to traffick but for some reason the Commission will not accept his statement of intent when weighed against the evidence of record which manifests a contrary conclusion. Thus, on the petitioner's own test of trafficking, the Commission's decision, and the opinion of the Court of Appeals thereon, would not be improper simply because they do not specify rigid time, price, and number of stations tests as the only decisional elements in a trafficking case. On the basis of this case's record, Crowder could not gainsay his own "intention" test. As the Commission's decision points out, after evaluating all the facts of record it could not accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH on account of ill health. Crowder defeated himself, so to speak, on the trafficking question, weaving a web with inconsistent and conflicting explanations from which his credibility could not be extracted. (See R. 1123).

The petitioner avoids recognition of the fact that he tried to turn the inquiry away by the explanations which, upon testing in the evidentiary hearing, turned out to be inconsistent, evasive or the subject of a deliberate misrepresentation (the WLIV general manager matter). An applicant for a broadcast license has a duty to be candid, frank and fair in his reports to the agency, because it is the assumption of truthfulness and candor in such reports upon which the Commission must rely. Without that assumption of forthrightness on the applicant's part, the regulatory system in sensitive public interest areas would be rendered inoperative. This is not a new principle, but one which is well established and viewed as a part of the Communications Act and the Commission's fulfillment of its statutory responsibility thereunder. *F.C.C.* v. *WOKO, Inc.*, 329 U.S. 223 (1946); *Lorain Journal* v. *F.C.C.*, 122 U.S. App. D.C. 127, 351 F. 2d 824 (1965), *cert.* denied *sub nom. WWIZ, Inc.* v. *F.C.C.*, 383 U.S. 967, rehearing denied 384 U.S. 947.

Contrary to the petitioner's contentions, this case does not involve difficult questions as to the number of broadcast authorizations which must be involved or the number of years any given license must be held to avoid a transaction being viewed as trafficking in broadcast licenses (Pet., p. 33 ff.). The petitioner answers his own argument where he concedes that "the rationale of decisions in this area is reconcilable only by taking refuge in varying factual patterns." (Pet., p. 35). That is just the point, as the Court below opined. Trafficking is a concept familiar in broadcast regulation and the Commission's long-standing policy reflects Congressional concern which commenced with the

initial Radio Act in 1927,[5] the Court of Appeals observed. Although the situations upon which the petitioner relied below, and now here, may have reached different results based on their particular facts, as the Court of Appeals recognized the cases do not deny the standard but show rather that it has always been clear. (Pet. App., pp. 7a-8a). The petitioner has not demonstrated the contrary in his petition to this Court.

The Court below fully considered the petitioner's contentions on appeal and rejected them. The petitioner has not demonstrated the Court to be wrong either in its recognition of the established trafficking concept or the propriety of the Commission applying the principle on the record made with respect to the petitioner's instant application for a station in a community in which he previously owned a station but sold it and thereafter attempted to mislead the Commission away from an exploration of the question. The petitioner's conduct being singular, the decision poses no threat to the broadcaster or applicant who does not pursue the course of attempted concealment.

B. Contrary to the Petitioner's Contention, a Review of the Record Upon Which the Commission and the Court Below Acted Is Unwarranted

The burden of Crowder's petition, variously titled and woven through his claim that the result is unjust to him and adversely affects the radio and television industry, is that the decision of the Commission and of the Court below is based upon an evaluation of the record different from that desired by him. The petitioner's argument on this broad point omits the por-

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[5] *Act of February 23, 1927*, 44 Stat. L. 1162-74.

tions of the record damaging to his theory, misstates other portions, and then leaps to the claim that unless a reassessment favorable to his position is made the Commission will be free to ride untrammeled on every broadcaster. The petitioner's contentions are founded primarily on conjecture. Witness, for example, his claim that the Commission ignored the question of bias of witness Burn with respect to Crowder (Pet., p. 25) against the record shown recognition by the Commission that Burn was not a disinterested witness (R. 1125), although, properly, it did not follow that his testimony had to be rejected on that account, for the facts taken as a whole were consistent with Burn's testimony. Even more significantly on this point, the petitioner fails to note anywhere in his petition the decisional premise that "Crowder has failed to meet his burden of proof without regard to the Burn's testimony." (R. 1123).

It is clear that neither the Commission nor the Court of Appeals ignored the items more favorable to the petitioner. (See, *e.g.*, R. 1120; Pet. App., p. 3a). But the record as a whole, including the clear showing of the petitioner's concealment of material facts from the Commission and the inconsistent explanations offered for the various transactions presents a substantial basis for the Commission's conclusion, as the Court of Appeals held. (See Pet. App., p. 9a). We do not think it desirable to extend this brief with a point by point demonstration of the inadequacy of the petitioner's instant claim for this Court's independent review of the record involved in this case. However, a few examples may be appropriate to indicate the deficiencies in Crowder's petition in this connection.

The petitioner's whole argument that his misrepresentations about the ownership of the billiard parlor had no relationship to trafficking (Pet., pp. 26-27) shows his misconception of what is involved. First of all, although the petitioner's claim that he made a mistake in only one application and forgot to note the sale of the interest in the business which was mechanically repeated (Pet., p. 26) is, most charitably, a half-eyed look at the record. The assertions of full ownership were made by Crowder in various ways; on the first pages of applications, and in schedules of other business interests where it could not reasonably be said to have been overlooked. Furthermore, in the application to acquire another station in Harriman, where he had previously owned and sold one, there were no qualifying conditions on his ownership claim, and in asserting a knowledge of the community's needs for a second station he stated that he was a businessman in the community, which, in part, led the Commission to make the initial grant without a hearing.[6] During the evidentiary hearing, when his latter-explanation claim of ill health in 1956 was to be explored against other activities in that year, *e.g.,* the acquisition and operation of the bottling plant, of WLIV, and of the other business indicated by the prior reports to the Commission as owned by Crowder at that time, the petitioner for the first time claimed "an error" with respect to the reported other businesses and admitted a misrepresentation as to the WLIV transactions. Thus, the claim by the petitioner of error in the previous reports to the Commission was significant both with respect to his credibility and the accuracy generally of his prior reports to the Commis-

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[6] "At present he is the owner of a business in Harriman . . . ." (R. 326).

sion and the accuracy of his claim that the sales of the broadcast facilities were forced by ill health. Further argument would not appear necessary; the evaluation of the billiard parlor ownership made by the agency has not been demonstrated to be legally unreasonable.

The petitioner's arguments with respect to the service rendered by the three stations in which he was involved seriously depart from the record. (Pet., p. 28). Although he was the applicant with the burden under the trafficking issue,[7] he introduced no evidence as to the service rendered by the stations. In point of fact, the only evidence on the question was developed by the respondent's examination, and the record shows that none of the local community programs represented in his application to be broadcast had in fact been carried during the time the new station was temporarily on the air. (Tr. 316-322). Thus, to the extent the petitioner seeks certiorari so that this Court may review the record and come up with a different evaluation thereof, the petitioner's threshold showing is inadequate. There appears no reason for this court to review, much less disturb, the conclusion of the Court below that the Commission action under review was amply supported by the record.

The petitioner's plea to this Court that he prefers the hearing examiner's proposed resolution of the trafficking issue to the Commission's decision is not unexpected (Pet., p. 29); however, as the Court below stated, the Commission's conclusions were amply supported by the record in this case. The Commission is charged

[7] See Section 309(d), Section 309(e), Communications Act of 1934, as amended, and the Commission's Hearing Order (R. 381, 383).

with the administration of the Communications Act and it is for it "to measure the force of the various vectors and to chart the resultant parallelogram of forces", *Lorain Journal, supra,* 351 F. 2d at 828, and with its decision having been tested against the substantiality of evidence on the record by the Court of Appeals further review of the evidence would be unnecessary and undesirable. *Cf., Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 491.

Based upon the record of this case, the petitioner's claim that he was unfairly treated by the Commission's consideration of his past transactions (Pet., p. 25) is unfair to the agency. He seeks to obscure the operative fact that the earlier transactions were brought to the fore by his own attempts to foreclose any consideration of them, *viz.,* his assertion in 1965 that the earlier sales of WHBT and WDEH were occasioned by ill health of such magnitude that he was forced to withdraw from the broadcast industry upon a physician's advice, which was confronted by his representation to the same agency at the same time of the now alleged ill health that he was acquiring another station in Livingston, Tennessee as a partner and general manager. The petitioner asserted the serious ill health and physician's advice proposition, but then wholly failed to demonstrate the truthfulness of the representation when he had the opportunity to do so in the evidentiary hearing. As set forth in the Commission decision and the decision of the Court below, the petitioner failed to meet the burden of proof with respect to the trafficking issue, and his claim of unfair application of the policy against trafficking in broadcast authorizations lacks foundation in the record.

CONCLUSION

This case concerns no important question warranting review by this Court. The singular aspects of the trafficking which resulted in the denial of the petitioner's application for a new radio station, including a pattern of concealments and inconsistent representations by the petitioner to the agency to forestall its consideration of the sensitive trafficking in licenses question, are not likely to recur with any frequency. Consequently, the decision below could not be said to affect "every broadcaster, present and potential" (Pet., p. 44), unless they too embark upon a course of misrepresentation and concealment. The petition for writ of certiorari should be denied.

Respectfully submitted,

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